

Implementation of the Death Penalty for Narcotics Criminal Offenders in the National Criminal Code From A Human Rights Perspective



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ABSTRACT: : The WvS Penal Code and the 2023 Penal Code still maintain the death penalty as a last resort in dealing with serious crimes. One of them is narcotics crime which is still a problem for Indonesia and other countries. so that in its eradication and handling requires cooperation with other countries. In the enactment of Law Number 1 of 2023 concerning the Criminal Code, where the death penalty is still enforced. The selection of penal means in tackling crime to obtain a deterrent effect for the community and for the convict himself so as not to commit a criminal offense again (preventing repetition of criminal acts). The emphasis is on repressive efforts against criminals. This research uses juridical-normative method. The maintenance of the death penalty is a criminal law policy in tackling serious crimes as a preventive and repressive effort.

KEYWORDS: Criminal Code; Death Penalty; Human Rights

I. INTRODUCTION

Transnational Organized Crime (TOC) is a term used to describe the type of crime that occurs beyond national borders, contradicts many national laws, or affects other countries. One form of TOC is narcotics trafficking which is carried out globally. This is due to the fact that drug trafficking crosses regional boundaries by crossing national borders. As the issue of drug trafficking has the potential to erode the legitimacy and authority of a country's government, it can jeopardize the country's political sovereignty.

The crime of drug use and distribution has become a transnational crime committed between countries without borders and regions. Drug crimes have been considered as the deadliest crime because the main target is the younger generation. The development of narcotics in Indonesia is also due to international organized crime from abroad. Criminal law itself should view drug users as victims of criminal acts.

The production and circulation of narcotics is so massive in our society. The role of the drug mafia seems unstoppable. Well-organized mafias are one of the factors that make it difficult for the government to eradicate transnational narcotics. Technological developments that cannot be avoided in the current era of globalization are the readiness of a country to deal with the impacts that occur for the development of a country, both positive and negative impacts. One of them is the distribution of narcotics which is a transnational crime.

The eradication of narcotics crime involves all nations in the world, but it turns out that the level of illicit drug trafficking is getting higher and more rampant. Several indications show that narcotics crime is an extraordinary crime. The definition is as a crime that has a very large and multidimensional impact on social, cultural, economic and political as well as the enormity of the negative impact caused by this crime. For this reason, extraordinary punishment is needed for this type of extraordinary crime that has occurred in all nations in the world as a transnational crime.

Cases of narcotics crimes that were sentenced to death, namely (Tempo, 2022): Raheem Agbaje Salami, a Nigerian citizen who was executed after being caught in possession of 5 kilograms of heroin. Mary Jane, a Filipino citizen who was arrested by the police at Adi Sutjipto Airport in 2010. Mary Jane was convicted of smuggling heroin weighing 2.6 kilograms. Andrew Chan and Myuran Sukumaran The drug case of these two men is known as the Bali Nine, which smuggled 8.3 kilograms of heroin out of Indonesia by nine Australian citizens. Based on the trial results, Chan and Sukumaran were sentenced to death on April 29, 2015. Freddy

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Budiman, one of the biggest drug kingpins in Indonesia who was executed was Freddy Budiman. The reason is, even though he was caught red-handed, Budiman was not deterred and repeated his actions in 1997, Freddy was involved in his first drug case so he was thrown into Cipinang Penitentiary. Then, in 2009, Freddy was again caught storing 500 grams of crystal methamphetamine and was sentenced to 3 years and 4 months in prison. In the case of Freddy Budiman, he was a recidivist convict in the same case. He was executed in Nusakambangan, Central Java on July 29, 2016.

Narcotics-related crime is a type of crime that is considered an extraordinary crime. In this publication, drug-related crimes include narcotics (drugs) and psychotropic crimes. Judging from its development during the 2018-2022 period, the number of drug-related crimes tends to fluctuate. In the last five years, the highest number of drug-related crimes occurred in 2018, amounting to 39,588 incidents. However, this does not rule out the fact that drug-related crimes as of 2022 are still relatively high.



Source: Mabes Polri (Bps, 2022)

As explained by Lawrence Friedman, the legal system includes: first, legal structure, namely the parts that move in a system mechanism or facilities that exist and are prepared by the system, such as courts, prosecutors. Second, legal substance, namely the actual results published by the legal system. For example, judge decisions, laws. Third, legal culture, namely public attitudes or values, moral commitment, and awareness that encourage the operation of the legal system or all factors that determine how the legal system has a logical place in the cultural framework of society (Muladi, 2009).

Policies or efforts to overcome crime are essentially an integral part of efforts to protect society (social defense) and efforts to achieve welfare (social welfare). It can be said that the ultimate goal or main goal of criminal politics is the protection of society to achieve public welfare (Barda Nawawi, 2014).

According to A. Mulder, *Strafrechtspolitik* is a policy line to determine:

- How far the applicable criminal provisions need to be changed or updated
- What can be done to prevent the occurrence of criminal offenses
- How the investigation, prosecution, trial, and execution of criminal offenses should be carried out.

According to Mulder's opinion, the policy of reform is not merely to form political policy, but must also pay attention to provisions to achieve social defense and efforts to achieve social welfare.

Despite the efforts of reforms and improvements, both practical and theoretical, to reduce the effectiveness of the punishment of deprivation of liberty, it is a fact that, on the one hand, the punishment of deprivation of liberty will still exist, even though it may have a different name, and on the other hand, without reducing the appreciation for the reformers of the punishment of deprivation of liberty, the punishment of deprivation of liberty will be attached to the disadvantages that are sometimes difficult to overcome (Muladi and Barda Nawawi, 2010).

Punishment can be referred to as the stage of determining sanctions and the stage of imposing sanctions in criminal law. The word criminal in its general sense is referred to as law, while punishment in the general sense as punishment. teachings that distinguish between material criminal law and formal criminal law. J.M. Van Bemmelen explains these two things as follows:

Material criminal law is a criminal act called successively, general regulations that can be applied to the act, and the punishment threatened against the act. The formal criminal law regulates how criminal proceedings should be carried out and regulates the rules that must be observed on that occasion.

Criminal law is a sanction law that aims to control deviant behavior, although not every sanction can work according to its purpose. Violation of criminal law is a human behavior that is determined by his attitude in dealing with a particular situation, and

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that attitude is based on a subjective awareness of the values and norms in society or groups accepted by each individual from the surrounding culture, so that a crime occurs due to a conflict of culture, ethnicity, race, religion, or the influence of poverty and prosperity, the influence of media mess, or due to limited opportunities to achieve goals. (Muladi and Barda Nawawi, 1984)

Meanwhile, the phenomenon of terrorism and radicalism as well as narcotics crimes that have the potential to threaten the lives of other innocent people have also led to research on the death penalty. In this case, the state is obliged (and the government) to protect all people from all threats both external and internal. The state should provide security and comfort of life to its citizens. In this research will discuss the death penalty for narcotics crimes, where in the National Criminal Code which was passed in 2023 made the death penalty as an alternative punishment.

This research aims to understand the extent to which Indonesian criminal law includes the death penalty. Based on the background explanation, problems can be identified, among others: How is the change in Indonesia's Death Penalty Policy in the future based on "Law Number 1 of 2023 concerning the Criminal Code? How is the legal certainty with the change of death penalty law in Indonesian criminal law?

II. RESEARCH METHODS

The normative legal research method uses a normative juridical approach. The normative juridical approach is "an approach that refers to the applicable laws and regulations" (Bambang Sunggono, 2003). Data collection in normative legal research is carried out by means of literature study in the form of secondary data as basic material to be researched by conducting a search for regulations and other literature related to the problem under study or often referred to as library legal research ".

According to Soerjono Soekanto, research is an attempt to analyze and construct methodologically, which means that a research is carried out by following certain methods and methods, systematically, which means that it must follow certain steps and consistently, which is carried out in accordance with principles (Soerjono Soekanto, 2011)

III. RESULTS AND DISCUSSION

A. Death Penalty for Narcotics Criminal Offenders

Death penalty is not contained in the main criminal charge. Death penalty is stipulated in a separate article to show that this type of punishment is truly special as a last resort to protect the society. Death penalty is the most severe punishment and must always be threatened alternatively with life imprisonment or maximum imprisonment of 20 (twenty) years, death penalty is imposed with probation period. Within the probation period, the convict is expected to be able to improve himself so that the death penalty does not need to be implemented and can be replaced with life imprisonment or imprisonment for a maximum of 20 (twenty) years (Barda Nawawi, 2014).

The imposition of death penalty for criminal offenders is based on criminal policy established by the state administrators. Criminal policy (criminal law politics) is part of legal policy as a whole, which is part of social politics (social welfare policy and social defense policy). Criminal politics is essentially an integral part of social politics, namely efforts to achieve social welfare, criminal politics consists of penal policy and non-penal policy.

Satjipto Rahardjo, as his opinion quoted by Nyoman Sarikat Putra, said that the law enforcement process also reaches the stage of making law / Law. The formulation of the mind of the law maker as outlined in the legislation will also determine how law enforcement will be carried out (Nyoman Sarikat Putra Jaya, 2005).

The application of death penalty is a penal effort in tackling crime. In deciding the application of certain death penalty will be influenced by law enforcement policy in general and also influenced by social policy which aims to achieve social welfare. Therefore, in imposing the death penalty against the perpetrator of the crime, the consideration of the imposition of punishment with the impact on society. Narcotics crime in the National Criminal Code is classified into special criminal offense. In Chapter 35 of the National Criminal Code, narcotics crimes are included in the Criminal Code, with an explanation, namely:

Serious crimes against human rights, terrorism crimes, corruption crimes, money laundering crimes, narcotics crimes are grouped in 1 (one) separate chapter called "Special Crimes Chapter". The placement in a separate chapter is based on special characteristics, namely:

- a. the impact of victimization is large;
- b. often transnational organized crime;
- c. the criminal procedure arrangements are special;
- d. often deviate from the general principles of material criminal law;
- e. the existence of supporting institutions for law enforcement that have special powers (for example, the Corruption Eradication Commission, the National Narcotics Agency, and the National Human Rights Commission);
- f. supported by various international conventions, both ratified and unratified; and
- g. it is an act that is considered *super mala per se* and is despicable and strongly condemned by the community (strong people condemnation).

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The crime of Narcotics is regulated in Articles 114, 116, 118, 119, and 121 of Law Number 35 of 2009 concerning Narcotics. In essence, the article states bidding, selling, buying, receiving, being an intermediary in the sale, purchase, exchange, or delivery of narcotics.

The controversial death penalty for perpetrators of serious crimes is always faced with basic human rights, especially the right to life that is inherent in every human being. Indonesia is a country that still maintains death penalty as a sanction used to overcome the problem of crime. The existence of death penalty is not only regulated in the Criminal Code, death penalty is also regulated in other laws and regulations, such as narcotics, terrorism and other serious crimes.

B. Death penalty in Human Rights perspective

Death penalty is a penal tool in tackling crime. The selection of penal means in tackling crime is to obtain a deterrent effect for the community and for the convict himself so that he does not commit a criminal offense again (preventing repetition of criminal acts). The emphasis is on repressive efforts against criminals. In addition to penal means, another way to tackle crime is through non-penal means. This means is carried out in continuity so that it takes a long time, and is more of a sociological appeal. Its implementation emphasizes the preventive aspect of crime.

"Human Rights (HAM) is a set of rights inherent in the nature and existence of human beings as creatures of God Almighty and is a gift that must be respected, supported and protected. honor and protection of dignity. Based on the definition of human rights, human rights are inherent human rights, natural rights and basic rights to be given by God, every individual, society, and even the state.

The imposition of death penalty with human rights will always be contradictory because the imposition of death penalty is related to a person's life, which in the 1945 Constitution of the State of Indonesia in Article 28 A of the 1945 Constitution which states that every person has the right to life, and the right to defend his life and life. Article 28 I states that the right to life is a basic right that cannot be reduced under any circumstances. Article 28 I requires people to pay attention to the right to life. However, Article 28 J states that everyone must respect the human rights of others and must submit to the restrictions stipulated by law to ensure recognition and respect for the rights and freedoms of others. In this article there is accountability for those who violate human rights, and the Indonesian criminal law system still applies the death penalty.

The development of death penalty planning and the death penalty in future changes to criminal regulations. Indonesian criminal law experts have shown that each party's support for the death penalty is legally supported. When applying for a judicial review against death row inmates related to drugs, the Constitutional Court has denied and rejected the abolition of the death penalty by stating that the death penalty nationally does not conflict or intersect with that in the 1945 Constitution.

Some important notes are that with respect to the amendment of criminal regulations, legitimate amendments and harmonization of death penalty regulations and guidelines, consideration should be given to the plan, application and requirements of the death penalty within the framework of Indonesian law enforcement.

The current Indonesian Criminal Code is a copy or inheritance of the Dutch WvS (Wetboek Van Strafrech), which has been in force in Indonesia since the January 1918 era and regulates the rules and includes the death penalty, defining the death penalty as the main punishment in the Indonesian criminal law system is contrary to the ideals of Indonesian law, despite the fact that the Netherlands abolished the death penalty in 1982 for all offenses and the death penalty for "customary crimes" in 1870. Situations where new evidence, or novum, shows that the accused is innocent. The most common form of punishment, the death penalty, has both positive and negative aspects. As the perception of the death penalty is highly dependent on the cultural context and worldview of the nation, the use of the death penalty as a means of crime eradication in Indonesia cannot be separated from its advantages and disadvantages. The issue of capital punishment is closely related to the construction of society, the political situation and the social qualities that exist in the society at large (Sahetapy, 2007).

Human rights are rights that relate to the nature of human existence. The imposition of punishment against convicted criminals must be oriented towards the protection of human rights. This punishment model is a humanistic punishment model or individualization-oriented punishment, with the following characteristics (Barda Nawawi, 2014) : (1) Application of culpability principle (no punishment without fault), (2) Flexibility or elasticity of punishment, (3) Modification (change/adjustment) of punishment. Through this model, the judge can apply a punishment that is considered suitable for the existence of the perpetrator, both psychiatric and physical conditions, so that it is hoped that there will be changes from the perpetrator towards a better direction to be able to return to society (resocialization).

The postponement of the death penalty is a concrete illustration of the idea of balancing the elasticity of punishment with the opportunity to increase applicants. Death row prisoners are put on probation for a period of ten years, during which time they can progress. The ten-year probation period also relieves convicts from the psychological pressure of not knowing when the offender will be executed.

Broadly speaking, legal provisions must be enforceable, have the ability to increase the number of occurrence factors and reduce the impact of obstacles that arise during the legalization process, especially in terms of criminal sanctions. For this reason, it is necessary to increase the supporting factors and reduce the inhibiting factors so that the implementation is more optimal. The death

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penalty is the harshest punishment in the Indonesian criminal justice system. The death penalty is at the highest point in the pecking order, which actually means that within the framework of Indonesian law enforcement, the death penalty is the most extreme and highest discipline; it surpasses all other forms of punishment. It may take more than one type of discipline, either severe imprisonment or the death penalty, to stand firm, as criminal authorization has a clear quality.

C. The execution of the death penalty in Indonesia is a political law of the state.

The UN Human Rights Committee agreed that the death penalty can be imposed in situations where a criminal act is considered a "most serious crime." The International Covenant on Civil and Political Rights (ICCPR) states that the use of the death penalty must be very select, applying only to certain situations that have a very serious impact, are deadly, and involve acts of violence. In the 1998 Rome Statute of the International Court of Justice, the "most serious crimes" include genocide, offenses against humanity, war crimes, and acts of aggression.

The death penalty has a significant and controversial impact on society. Supporters of the death penalty argue that it is a form of legal remedy that provides justice for victims and society, and is capable of providing a deterrent effect against perpetrators of serious crimes. However, human rights groups and many international organizations have voiced the view that the application of the death penalty is inconsistent with fundamental human rights, particularly the right to life and the right not to be subjected to torture, cruel, inhuman or degrading treatment or punishment. Every individual is recognized as having the right to life, and the administration of the death penalty is considered a serious violation of this right. The human rights perspective also emphasizes the protection of the right to be protected from torture, cruel treatment, inhuman cruelty, or humiliation of dignity. The use of the death penalty is more likely to prioritize a retaliatory approach, while in the current criminal law paradigm, the focus is shifting to restorative justice. In a further context, the traditional view states that the death penalty is seen as a crucial measure to deter people from breaking the law. However, the results of comprehensive surveys by the United Nations in 1988 and 1996 found that there were no death sentences.

Nonetheless, it is important to note that Indonesia has legal sovereignty and policy regarding the death penalty is the prerogative of the state. The death penalty in Indonesia is imposed on perpetrators of crimes that are considered very serious, such as premeditated murder, acts of terror, illegal drugs, and violations of the law against state security. Death penalty as a type of special punishment in the new Criminal Code is regulated from Article 98 to Article 102. The reform that has been carried out in the new Criminal Code, the judge imposes death penalty with a probation period of 10 years. This is contained in Article 100 of Law Number 1 Year 2023 on Criminal Code. Article 100 paragraph (1) of the Criminal Code stipulates that the judge imposes death penalty with probation for 10 years by taking into account the remorse of the defendant and there is hope to improve himself or the defendant's role in the criminal offense. Article 100 paragraph (2) explains, death penalty with probation period as referred to in paragraph (1) must be included in the court decision. then when he shows commendable attitudes and actions during the probation period, the death penalty can be changed to life imprisonment.

Death Penalty in the Criminal Code (KUHP) 2023

Death penalty alternatively in KUHP is imposed as the last resort to protect the society. The execution of death penalty can be postponed with probation period for ten years, if:

1. the public reaction towards the convict is not too big;
2. the convict shows regret and there is hope for reparation;
3. the position of the convict in the participation of criminal offense is not too important; and
4. there are mitigating reasons.

Changes in the status of death penalty are listed in the draft of the new Draft Criminal Code, which will be submitted to be stipulated by the House of Representatives. Article 66 of the Draft Criminal Code states that death penalty becomes a special main punishment and is imposed alternatively with other main punishments. The execution of this punishment is by shooting the convict to death and is not carried out in public. The imposition of death penalty is considered to take away a person's right to life. Whereas every person has the right to live and the right to defend his/her life and livelihood (Article 28A of the 1945 Constitution). Opponents of death penalty consider death penalty is no longer in line with the development of human rights. All countries have the concept of upholding human rights, and Indonesia as part of countries in the world must participate in realizing human rights. According to them, the regulation of human rights in a formal legal manner in the state of Indonesia should have abandoned the death penalty. Human rights, especially the right to life, are declared as non derogable rights. This is stated in Article 28 I paragraph (1) and Article 28J paragraph (2) of the 1945 Constitution, Article 4 of Law Number 39 of 1999 concerning Human Rights.

Upon the enactment of the Criminal Code Law, there are several changes including with regard to the death penalty law, as for the current fundamental difference in the death penalty initially as a principal punishment turned into a special punishment as contained in Article 64 of the Criminal Code Law, which is threatened alternatively and imposed with a probation period of ten years as stated in Article 100 paragraph (1) "The judge imposes death penalty with a probation period of 10 (ten) years by taking into account:

- a. the defendant's remorse and hope to improve himself; or

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b. the defendant's role in the criminal offense". In this probation period, it is certainly very irrelevant to the reason if it is associated with the status of a defendant, then being a foster citizen in a correctional institution will always behave well.

In accordance with the purpose of correctional described in the Law of the Republic of Indonesia No. 22 of 2022 on Corrections Article 2 letter b, that the purpose of the implementation of correctional is none other than to form, train and provide guidance to prisoners so that one day they become the best human being and can regret their actions.

In the interests of the community or those who commit crimes to be protected from arbitrary treatment or the emotional level of the community or especially victims, especially if the death penalty is left unchecked, the death penalty is expected to be better used. rational and reasonable analysis of all aspects of the trial in adjudicating and the decision in deciding a case. The guidelines for the formation of the national Criminal Code Reform cannot be separated from the national ideology or ideology of life, as well as the human, natural, and cultural conditions of the nation. Criminal Law Reform efforts are also the progress of the world that is felt by ordinary people. Overall, "Guidelines for Balancing Interests with a Piece of Pancasila Science". As a result, the values listed there and contained in the Pancasila to be incorporated into the articles of the Criminal Code.

In order for future criminal regulation to keep pace with scientific progress and innovation to further develop it in the public arena, efforts to change criminal regulation in Indonesia must be carefully and earnestly focused. In accordance with appropriate legal guidelines, the most common way to improve Indonesia's criminal code should proceed in stages. An important first step in policing regulation is the strategy of criminal regulation in the formal cycle.

The death penalty strategy in Indonesia can be improved or changed to begin to solve the problem of the death penalty in Indonesia. that the crimes that currently carry the death penalty, such as terrorism, corruption, drug crimes, and sexual crimes against children, are "massive", indicating that they are widespread and not age-sensitive. and make distinctions in the articles regarding crimes against children. Some crimes have spread throughout society, in large urban communities as well as in rural and metropolitan areas. Therefore, criminals require severe punishment, including the death penalty, in order to deter others (Nyoman Serikat P. Jaya, 2015).

Legal certainty is one of the objectives of law and can be said to be an effort to realize justice. The real form of legal certainty is the implementation and enforcement of the law against an action regardless of who did it. The existence of legal certainty everyone can predict what will happen if they take legal action, certainty is needed to realize justice. Law is a collection of rules or rules in a common life, the overall rules of behavior that apply in a common life that can be enforced with a sanction. Legal certainty is an inseparable characteristic of law, especially for written legal norms.

CONCLUSIONS

Law Number 1 Year 2023 on Criminal Law (National Criminal Code) still regulates death penalty as an alternative punishment. Revisions to the policy on the implementation of the death penalty can only be carried out in conjunction with a ten-year moratorium. Article 100 of the KUHP regulates in writing the conditions that allow the death penalty to be postponed. These conditions include repentance and sincere efforts to improve oneself. This article emphasizes that the execution of the death penalty is decided by the suspension of its execution for ten (10) years. Article 100 paragraph 4 of the Criminal Code also states that the death penalty will be suspended for ten (10) years on the condition that the convict is of good behavior, then the President's decision will be reviewed by the Supreme Court, the death penalty can be changed to life imprisonment. In Law Number 1 of 2023 concerning the Criminal Code is also inseparable from the reform of the Indonesian criminal law. For narcotics crimes in terms of the vast victims who also damage the nation's generation, it should be considered by the judge. The death penalty verdict is not immediately decided but goes through many stages and wise considerations by the judge. In relation to human rights, it is clear that the Criminal Code 2023 has considered maintaining the death penalty in addition to prevention efforts as well as efforts in dealing with serious crime cases. Criminal sanctions will continue to be related to rights as stipulated in the law. The death penalty is the best way to deal with and prevent significant crimes that have persisted throughout the history of Indonesian criminal law. There are three legal objectives associated with the death penalty: expediency, justice, and legal certainty. Legally, the death penalty is intended to be applied to crimes (terrorism, narcotics, and premeditated murder).

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